TAN KIM LENG & ANOR. v. CHONG BOON ENG & ANOR.

[F.C. (Ali, Raja Azlan Shah and Wan Suleiman F.JJ.)
July 26, 1974]
[Johore Bahru — Federal Court Civil Appeal No. 138 of 1973]

Practice and Procedure — Appeal — Grounds of judgment — Whether mere finding of trial judge is a judgment — Federal Court (Civil Appeals) (Transitional) Rules, 1963, rr. 19(4)(e) and 25.

In this appeal a preliminary objection was raised by the respondents that the appeal record did not contain a certificate of the trial judge's grounds of judgment. In this case the facts were that a fully laden timber lorry belonging to the second respondent and driven by the first respondent ran into the rear of the deceased's timber lorry which was stationary on the road. The respondents in their defence had denied negligence and averred that the damage, if any, had arisen by reason of inevitable accident because of a sudden failure of the braking system. At the conclusion of the trial the learned trial judge recorded a finding that on the evidence he could find no negligence against either of the defendants. He said the accident occurred because of the sudden brake failure on account of some latent defect in the braking system and therefore he said he would dismiss the claim at common law.

Held: the preliminary objection should be allowed and the appellants be ordered to comply with the requirement of Rule 25 of the Federal Court (Civil Appeals) (Transitional) Rules, 1963, by applying forthwith for a certificate of the grounds of judgment.

FEDERAL COURT.

S. Patmanathan for the appellants.

A. D. Rajah for the respondents.

Raja Azlan Shah F.J.: It is common ground that a fully laden timber lorry belonging to the second respondent and driven by the first respondent ran into the rear of the deceased's timber lorry which was stationary on the road. The deceased was then in the driver's cabin. Such an occurrence of the contact of these two lorries in the circumstances described in the pleadings would support an inference that the driver of the first lorry was either not keeping a proper look out or driving at an excessive speed, which in the circumstances he ought reasonably to have been driving. In order to support a judgment in favour of the deceased if no more were known, there would be no need to determine which of these, or perhaps, other possible negligent causes of the impact was the correct one.

But the respondents called evidence that just prior to the collision, the braking system of the lorry became defective, which was due to a latent fault that could not be discovered by normal servicing and inspection. They claimed inevitable accident. If that evidence was accepted the occurrence would cease to be one in which a lorry capable of being stopped if driven at a proper speed and with a proper look out ran into the stationary lorry. Once it was accepted that the lorry had become incapable of being stopped even with a proper look out and though driven at what in the circumstances was a reasonable speed, in my opinion, no inference of want of care on the part of the first respondent was available from the occurrence itself. If the judge of fact believed that the braking system immediately before the collision was in the condition described by him, the occurrence changed its complexion.

In reaching a conclusion the learned judge had to consider the probabilities and the circumstances of the whole case. It was essentially a case in which there should have been a full record of the reasons which persuaded him to reach the conclusion he did. A mere finding of no negligence against both the respondents and that the accident occurred because of the sudden brake failure on account of some latent defect in the braking system, not supported by reasons, is not a judgment according to law.

A judicial determination of a dispute where substantial questions of mixed fact and law arise is satisfactorily reached only if it be supported by the most cogent reasons that commend themselves to the learned judge. Recording of reasons in support of a decision of a dispute serves more purposes than one. It is intended to ensure that the decision is not the result of whim or fancy. "It is of course true", said Sir Alfred Denning (as he then was), "that his decision may be correct even though he should give no reason for it or even give a wrong reason: but, in order that a trial should be fair, it is necessary, not only that a correct decision should be reached, but also that it should be seen to be based on reason; and that can only be seen, if the judge himself states his reasons." see *The Road to Justice*, page 29.

A party to the dispute is ordinarily entitled to know the grounds on which the learned judge has decided against him, and more so, when the judgment is subject to appeal. An appellate court will then have adequate material on which it may determine whether the facts are properly ascertained, the law has been correctly applied and the resultant decision is just.

In my opinion the finding of the learned judge in the instant case is not a judgment according to law.

Ali F.J. concurred.

Wan Suleiman F.J. (judgment on preliminary objection): This is a preliminary objection raised by the respondents in this appeal against the decision of the learned judge in Muar High Court Civil Suit No. 124 of 1971.

The appellants/plaintiffs had brought this action as administratrix and administrator respectively of the estate of Liow Fook Leng, who had died as the result of an accident involving the lorry which he was driving and a timber lorry driven by the first respondent, the servant or agent of the second respondent.

The respondents, in their statement of defence had denied negligence, and averred that the damage if any, had arisen by reason of inevitable accident.

The "Particulars" given in paragraph 3 of the Statement of Defence reads:

"just prior to the collision the brake broke and the collision was inevitable and could not be avoided by the exercise of reasonable skill and care. The breaking of the brake was due to a latent fault that could not be discovered by normal servicing and inspection."

In giving judgment for the respondents/defendants, at the conclusion of the trial the learned trial judge recorded as follows:

"*Finding:* On the evidence before me I can find no negligence against either of the defendants. The accident occurred because of the sudden brake failure on account of some latent defect in the braking system. I would therefore dismiss claim under common law. But there will be judg-

ment for the plaintiff under section 41(2) against the 2nd defendants of the Workmen's Compensation Ordinance in the sum of $7,200. There will be no order as to costs."

Mr. Rajah for the respondents contends that Rules 25 and 19(4)(e) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963 have not been complied with.

Rule 25 reads:

"On the application of any person ... the judge of the High Court who gave or made the same shall, *unless the judgment was written, certify in writing the grounds of such judgment* or order; but delay or failure so to certify shall not prevent the appellant from proceeding with his appeal." (the italics is mine).

Rule 19(4)(e) reads:

"The appellant shall attach to such memorandum copies of the proceedings in the High Court, including:

(e) the certificate, if any, given by the judge of the *grounds of his judgment* or order or, if a *written judgment* was delivered, a copy thereof;" (Here again, the italics is mine).

Mr. Rajah argues that what is in the Appeal Record is a mere finding by the learned trial judge, in other words, a conclusion upon an inquiry of fact and that this finding was neither a certificate of his grounds of judgment nor a copy of his written judgment.

The term "judgment" is sometimes used in different senses. It may mean "a judicial determination; the decision of a court; the decision or sentence of a court on the main question in a proceeding, or in one of the questions, if there are several... The term "judgment" is also used to denote the reasons which the court gives for its decisions; ..." (See 'The Dictionary of English Law' by Earl Jowitt).

In the context of the Rules 25 and 19(4)(e) it is abundantly clear that the last mentioned meaning should be given to the term and that a "written judgment" must indeed be synonymous with "grounds of judgment", and must denote the reasons which the court gave for its decision.

Coming back to the finding as recorded by his Lordship, that "the accident had occurred because of the sudden brake failure on account of some latent defect in the braking system" which had been mistakenly regarded by appellants as grounds or reasons. I would say, with respect, that his Lordship in paraphrasing the "Particulars" given in the Statement of Defence was merely declaring his agreement with the defence raised in the pleadings, and not giving reasons for so agreeing.

I would therefore allow the objection and order appellants to comply with the requirement of Rule 25 by applying forthwith for a certificate of the grounds of judgment.

It would perhaps be pertinent to observe that the abovementioned rule also provides that delay or failure by the trial judge to certify in writing the grounds of his judgment shall not prevent the appellant from proceeding with his appeal.

Costs should be costs in the cause.

Solicitors: *Wong & Paramjothy; Lovelace & Hastings.*

LONG BIN SAMAT & ORS. v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Ali Hassan and Wan Suleiman F.JJ.) August 10, 1974]

[Kota Bharu — Federal Court Criminal Reference No. 8 of 1973]

Criminal Law & Procedure — Summary trial before magistrate — Accused charged, tried and convicted on a lesser offence — Evidence given of more serious offence — Whether trial a nullity — Powers of Public Prosecutor — Federal Constitution, art. 145(3) — Criminal Procedure Code (F.M.S. Cap. 6), s. 376(i).

In this case the accused had been tried and convicted before a Magistrate's Court of the offence of voluntarily causing hurt by means of an instrument for cutting, namely a parang, an offence punishable under section 324 of the Penal Code. In the course of trial it transpired that the hurt suffered by the victim was grievous hurt. The learned magistrate ignored this evidence and went on with the trial at the end of which he convicted and sentenced the accused as charged under section 324 of the Penal Code. On appeal to the High Court it was contended that as the victim's hurt was grievous the accused should have been charged and tried under section 326 of the Penal Code, which prescribes a penalty of penal servitude for life or ten years' imprisonment and that as such a charge would have been beyond the jurisdiction of the magistrate, the trial in this case was a nullity. In the High Court, Ibrahim J. held that the trial was not a nullity but he referred the following question to the Federal Court —

> "Whether in view of the fact that the accused were charged under section 324 of the Penal Code and tried by the magistrate in the lower court and decided therein the facts clearly disclosed an offence under section 326 of the Penal Code the said trial was a nullity?"

Held: (1) the Public Prosecutor is given wide discretion over the control and direction of all criminal proceedings and can in particular decide to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court;

(2) the trial in this case was not a nullity and therefore the question referred to the Federal Court must be answered in the negative.

Public Prosecutor v. *Lee Hor Sai*(6) and *Public Prosecutor* v. *Karnal Singh*(7) disapproved.

Cases referred to:-

(1) *Muniandi* v. *Public Prosecutor* [1963] M.L.J. 153.
(2) *Mahbub Shah* v. *Emperor* A.I.R. 1945 P.C. 118.
(3) *Isa bin Che Noh & Ors.* v. *Public Prosecutor* [1956] M.L.J. 93.
(4) *Man & Anor.* v. *Samsah* (1877) 3 Ky. 99.
(5) *Sahat* v. *Haji Brahim* (1888) 4 Ky. 337.
(6) *Public Prosecutor* v. *Lee Hor Sai* [1969] 1 M.L.J. 16.
(7) *Public Prosecutor* v. *Karnal Singh* [1970] 1 M.L.J. 49.
(8) *Public Prosecutor* v. *Viran* [1947] M.L.J. 62.
(9) *King-Emperor* v. *Ayyan* I.L.R. 24 Mad. 675.
(10) *Bapoo* v. *Rex* [1935] M.L.J. 19.
(11) *Smedleys Ltd.* v. *Breed* [1974] 2 All E.R. 21.

FEDERAL COURT.

A. Gomez for the appellants.

Lamin bin Haji Yunus (Deputy Public Prosecutor) for the respondent.

In the court below (*A. Gomez* for the appellants, and *Datuk Abu Mansor* (Deputy Public Prosecutor) for the respondent) the following judgment was delivered:

Ibrahim J.: This is an appeal by the three appellants who were convicted and sentenced to $900 fine in default 6 months imprisonment each by the learned Magistrate, Bachok, on the following charge: —